PUBLIC PROSECUTOR

v.

AZIZ MOHD. ALI

HIGH COURT BORNEO, LABUAN
SYED AHMAD IDID JC
[CRIMINAL TRIAL NO. 4/90]
20 MARCH 1992

CRIMINAL LAW: *Initially charged for committing murder - Section 302 Penal Code - Charge reduced to culpable homicide not amounting to murder - Notes of proceeding of preliminary inquiry adduced in Court - Accused escaped from mental hospital - Penal Code ss. 302, 304 - Criminal Procedure Code ss. 143(6), 149, 178, 179(i)(iii), 342 to 352.*

The accused was first charged for committing murder under s. 302 of the Penal Code and a preliminary inquiry was duly held and completed. The accused was then committed for trial before the High Court. At the trial the prosecution reduced the charge from murder to one of culpable homicide not amounting to murder under s. 304 of the Penal Code. The accused pleaded not guilty. The deputy public prosecutor produced the notes of proceedings recorded at the preliminary inquiry. Relevant parts of the notes were read out and these were statements of the respective witnesses. Although s. 179(iii) only specifies the "statement or evidence of the accused and does not include witnesses but the Judge allowed this for three reasons:

(i) majority of the witnesses were in Court;

(ii) the learned defence Counsel had agreed to accept the evidence recorded at the preliminary inquiry and

(iii) the accused was present and he appeared to be of sound mind and so could understand the evidence.

Both the defence Counsel and the deputy public prosecutor were in full agreement that the accused was of unsound mind when he committed the act of killing, and agreed that s. 347 of the Criminal Procedure be applied in this case, that is, power of Court to acquit the accused on grounds of "mental disorder".

Held:

[1] The accused committed the offence of culpable homicide by causing the death of Chong Niam Jin under s. 304 of the Penal Code.

[2] However, the accused was incapable of knowing the nature of the act alleged as constituting the offence or that it was wrong or contrary to law. Accordingly the accused was acquitted in accordance with s. 347 of the Criminal Procedure Code.

[3] The accused was ordered to be kept in safe custody of the Kota Kinabalu prison to continue his treatment. As provided under s. 348(i) of the Criminal Procedure Code, the case will be reported for the orders of His Majesty the Yang Dipertuan Agong and the Court would await any order under s. 348(ii) of the Criminal Procedure Code.

[Accused acquitted of the offence and ordered to be detained in Kota Kinabalu prison to continue treatment.]

Legislation referred to:

Criminal Procedure Code, ss. 143(b), 149, 178, 179(i), (iii), 342, 342(i), 344, 346, 347, 348(i), (ii), 352, 384

Penal Code, ss. 84, 302, 304

For the public prosecutor - Rajendran a/l Nayagam, (DPP)
For the accused - Hadrian Sinsua (assigned)

JUDGMENT

Syed Ahmad Idid JC:

The accused Aziz Bin Mohd Ali was first charged for committing murder under s. 302 of the Penal Code. He was brought to the Magistrates Court on 21 July 1989, for having caused the death of a female on 11 March 1989. The preliminary inquiry was held on 7 July 1990, and completed on 8 November 1990. Since then the accused had been detained in custody by virtue of s. 149 of the Criminal Procedure Code.

The accused was then committed for trial before the High Court. See s. 143(b) of the Criminal Procedure Code. His case was mentioned before the High Court in Labuan on 20 June 1991, and he was charged for murder. Finally on 12 February 1992, that is, yesterday the matter came up for trial before me.

At the trial, the prosecution reduced the charge from murder (s. 302 of the Penal Code) to one of culpable homicide not amounting to murder under s. 304 (second limb) of the Penal Code. Still the fact of the matter was that the charge against the accused was that he caused the death of one Chong Niam Jin:

> You are charged at the instance of the public prosecutor, Malaysia and the charge against you is:
>
> That you, on 11 March 1989, at about 10 p.m. at house No. 133, Kerupang 2, in the Federal Territory of Labuan, caused the death of one Chong Niam Jin, with the knowledge that your act was likely to cause death and thereby committed an offence of culpable homicide not amounting to murder, punishable under s. 304 (second limb) of the Penal Code.
>
> Dated this day of 12 February 1992.

And this was signed by deputy public prosecutor Rajendran a/l Nayagam.

I took it that the deputy public prosecutor acted in accordance with s. 384 of the Criminal Procedure Code.

When the trial began, the charge was read and explained to the accused (s. 178, CPC) and he pleaded not guilty. At that stage, the normal procedure was for the prosecution to adduce evidence.

The learned deputy public prosecutor, in compliance with s. 179(i) Criminal Procedure Code, stated that the prosecution had direct evidence to prove that on 11 March 1989, at about 10 p.m. accused went to the house No: 133, Kerupang 2, Labuan and got into the house by breaking the kitchen glass window. He then confronted the victim or deceased and choked her with both his hands; deceased fell to the ground. The victim pleaded with the accused not to kill her. The prosecution, through circumstantial evidence would prove that the accused killed the victim. The deceased is Chong Niam Jin, a 47 year old mother. At the request of the learned deputy public prosecutor, the High Court Assistant Registrar, Mr. Patrick Yong, having affirmed in the witness stand, produced the notes of proceedings recorded by the Magistrate at the preliminary inquiry. This was in accordance with s. 179(iii) Criminal Procedure Code.

The learned deputy public prosecutor then read out the parts which he considered relevant from these notes, and these are of the statements of the respective witnesses. I do note that s. 179(iii) only specifies the "statement or evidence of the accused" and does not include witnesses but I allowed the learned deputy public prosecutor to adduce his evidence in this manner for three reasons:

(i) the majority of the witnesses were in the Court; they had the opportunity to speak if they chose;

(ii) the learned defence Counsel had agreed to accept the evidence recorded at the preliminary inquiry. Mr. Hadrian Sinsua confirmed that he "had no objection to this course of producing evidence";

(iii) the accused was present and he appeared to be of sound mind and so could understand the evidence and statements.

Basically the learned deputy public prosecutor re-read the material areas of the notes of proceedings and called Dr. Edward Jeremiah who is now in private practice in Kapar, Klang. On the date of the incident, he was the Government Medical Officer in Labuan. He produced the post mortem report also known as "Medical Report of a Police Case" on the victim who was "brought in dead". The witness testified that the cause of death was "multiple deep stab wound injuries". On cross examination, the witness confirmed that the wound "over the left kidney could by itself cause death.

Mr. Hadrian Sinsua confirmed that the defence did not dispute the act of homicide. Since the charge had been reduced from murder, this was the way to say the accused accepted the facts supplied by Mr. Rajendran a/l Nayagam, the deputy public prosecutor. Without more this also appeared to suggest that the accused "pleaded guilty" but the case unfortunately is not that simple. The accused had, as I had said earlier, claimed to be tried.

When one reads chapter XXXIII, ss. 342 to 352 to the Criminal Procedure Code, one can distinguish between the accused being of unsound mind:

(i) at the time the act (in our case the killing) was committed. [See s. 346 CPC] and

(ii) during the trial or inquiry and consequently the accused was incapable of making his defence (See s. 342(i), 344 CPC)

In our case, both Mr. Rajendran and Mr. Sinsua are in full agreement that the accused was of unsound mind when he committed the act of killing the 47 year old mother on the night of 11 March 1989. But the defence denies that accused is guilty as charged pursuant to s. 84 of the Penal Code. Mr. Sinsua referred to the testimony of:

(i) PW1 who described the accused as "orang gila",

(ii) PW5 who said "seorang gila" (referring to the accused) "... membunuh emak saya".

(iii) PW7, in his testimony extracted from the notes of proceedings, described the accused as "terlalu agresif", dia selalu marah dan cuba hendak mengamuk" ...and that accused "juga mengaji Quran dengan suara yang kuat"... PW7 concluded the accused "tidak normal".

(iv) PW3 who said that accused "remains at the verandah" (after killing the victim). In other words, accused did not make any efforts to run away.

Equally important was the medical report, accepted as Exhibit P3 and agreed to by the learned defence Counsel. The report, on the accused, was stated to be case No: 129/89 and it mentioned that the accused:

> ... suffers from a major mental disorder, schizophrenia, which is characterised by disturbances in thinking, perception, emotion and behaviour ...

Further that:

> ... at the time of the alleged offence, En. Aziz (that is, the accused) was suffering from defect of reason due to disease of mind and acted under a delusion and false perception ...

Both the learned deputy public prosecutor and the learned defence Counsel agreed that s. 347 of the Criminal Procedure Code be applied in this case, that is, there is power of the Court to acquit accused on grounds of "mental disorder" that is, unsoundness of mind.

Conclusion

I accepted the facts of the case as these were agreed to by the accused and the defence Counsel. Had there been any doubt otherwise, I could have called for evidence to be given by all the individual witnesses.

On the evidence elicited by the prosecution, I can specifically state that the accused committed the act, that is, the offence of culpable homicide by causing the death of Chong Niam Jin at about 10 p.m. on 11 March 1989, in Labuan (which is a crime under s. 304 of the Penal Code). But also on the evidence by the witnesses (which I have stated as submitted by Mr. Hadrian Sinsua) and particularly by the medical report of Dr. Kauthaman a/l Mahendran the then Medical Officer at Bukit Padang Hospital, it is manifest that the accused was of unsound mind at the time at which he was alleged to have committed the offence. In accordance with the medical report, I am also of the opinion that the accused was then incapable of knowing the nature of the act alleged as constituting the offence or that it was wrong or contrary to law.

This finding is fortified by the evidence that the accused had earlier assaulted his father and that on that fateful day the accused, who had been committed to the Mental Hospital in Labuan, escaped which then provided him the opportunity of going to the house where the victim resided.

On these facts, I have to, and I do, acquit the accused in accordance with s. 347 of the Criminal Procedure Code.

I was further urged by both the prosecution and the defence Counsel to keep the accused in prison in Kota Kinabalu, so that he can continue with the medical treatment he is currently receiving pending the decision on my report which I must submit in accordance with s. 348(i) Criminal Procedure Code. I am reminded that the Prosecution's purpose of initiating these proceedings is not to get a conviction but to have the accused incarcerated on grounds of insanity. I can add that this will be for accused's own good and possibly also to protect society. As Mr. Rajendran said, accused must be guarded 24 hours a day until medical advice can confirm otherwise. There is the fear he will kill again. On these submissions, it is apparent that this is not a simple case that I have to deal with today.

I accept the requests in this respect of both the learned deputy public prosecutor and the learned defence Counsel and so I order that accused be kept in safe custody of the Kota Kinabalu prison to continue his treatment and that his condition be periodically reviewed.

As provided for by s. 348(i) of the Criminal Procedure Code, this Court will report this case for the orders of His Majesty the Yang Di Pertuan Agong and will await any order under s. 348(ii) of the Criminal Procedure Code.

Now, I address the children and family of the victim, that is, Chong Niam Jin. The Court thanks them, particularly Hiew King Fun, Hiew King Fah, and Hiew King Hin and all witnesses for volunteering their evidence which helped this Court to arrive at a decision within the law. The Court is deeply sorry the Hiew family has lost their mother through no fault of theirs and whatever decision the Court makes will not bring back their mother to life.

I hope you understand why I acquit the accused. If it is of any consolation, the accused does not go free. The abnormal circumstances of this case compels me to decide in this way.

Also found at [1992] 4 CLJ 1893